

# **HEALTH SERVICES AND DEVELOPMENT AGENCY**

## **MINUTES \***

**April 27, 2016**

### **AGENCY MEMBERS PRESENT**

Johnson, D. Lynn, Chair  
Wright, James, Vice-Chair  
Doolittle, Robert S.  
Burns, Charlotte  
Fleming, Martin, M.D.  
Mills, Thom  
Grandy, Joe  
Gaither, Keith, designee for the TennCare Director  
Jordan, Lisa, designee for the Commissioner of Commerce and Insurance

### **ABSENT**

Ridgway, Corey  
Harding, Jaclyn, designee for the Comptroller of the Treasury

### **AGENCY STAFF PRESENT**

Hill, Melanie, Executive Director  
Ausbrooks, Mark, Administrative Assistant III  
Christoffersen, Jim, General Counsel  
Craighead, Alecia, Statistical Analyst III  
Earhart, Phillip, HSD Examiner  
Farber, Mark, Deputy Director  
Finchum, Rhonda, Administrative Officer

### **COURT REPORTER**

Daniel, April

### **GUESTS PRESENT**

Adams, Jennifer, Manager, Vanderbilt University Medical Center  
Bernard, Gordon, Professor, Vanderbilt University  
Brent, Michael D., Esq., Bradley, Arant, Boult & Cummings  
Carpenter, Emily, Administrator, Vanderbilt University Medical Center  
Duncan, Bruce, Assistant Vice President, National HealthCare Corporation  
Edwards, Terri, Associate Director, Vanderbilt University Medical Center  
Elrod, Dan, Esq., Butler Snow  
Felts, Ginna, Business Development, Vanderbilt University Medical Center  
Fitzgerald, Bryce, Esq., Kramer Rayson, LLP.  
Hardy, Tammy, CEO, Lauderdale Community Hospital  
Hubbard, Debbie, Administrator, National HealthCare Corporation  
Kroplin, Matt, Esq., Burr & Forman  
McElhinney, Michael, President/CEO, Michael Dunn Center  
Reed, Ann, R., R.N., BSN, MBA, Director of Licensure, TDH, Division of Health Care Facilities  
Scott, Chris, Director of Strategic Planning, RCHA  
Sloan, Theresa, General Counsel, Department of Intellectual and Developmental Disabilities  
Stevens, George, CEO, Open Arms Care Corporation  
Swearingen, Travis, Esq., Butler Snow  
Taylor, Jerry W., Esq., Burr & Forman  
Trauger, Byron R., Esq., Trauger & Tuke  
Vetter, Stacia, Assistant Vice President, National HealthCare Corporation  
West, Stacy, Administrative Officer, Vanderbilt University Medical Center

West, William H., Esq., Baker Donelson

### **ROLLCALL TO ESTABLISH QUORUM**

Mr. Johnson requested roll call to establish quorum.

PRESENT: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson

Nine (9) members present.

### **DIRECTOR'S ANNOUNCEMENTS**

Melanie Hill, Executive Director, made general announcements regarding the following:

- 1) Instructions were provided for those providing testimony on the scheduled agenda items;
- 2) The May meeting has 4 applications scheduled for review. The June agenda has only 1 and July has the possibility of 3.

### **LEGISLATIVE UPDATE**

Ms. Hill reported the General Assembly approved HB 1730/ SB1842 on April 20th. It was signed by both Speakers on April 22nd, and was transmitted to the Governor on April 25th. This bill makes significant changes to the certificate of need program. The legislation will drastically decrease the Agency's funding stream. Agency staff has met with F & A budget analysts, who confirmed that fees would have to be increased significantly to comply with the bill's charge to self-fund the Agency's budget, effective July 1, 2016. Since it is not realistic to raise fees high enough to cover the entirety of this lost revenue, nor would it be fair to the remaining CON applicants, two vacant positions that were to be filled will be abolished, leaving the Agency with only eight positions to carry-out core functions of the certificate of need program, including new duties assigned by the legislation. With only ten staff positions, the HSDA is already one of the smallest agencies in state government. The Agency will also need to look at other cost cutting initiatives such as bi-monthly or quarterly meetings, on-line packets instead of paper, and reducing its copiers.

Mr. Christoffersen summarized the changes made by the bill. He also addressed the legislation's charge that the Agency be fiscally self-sufficient, while losing nearly half its funding - including most high-dollar applications. He noted those behind the bill had been made aware that this would result in a significant increase in the cost of filing an application for remaining CON activities.

Mr. Christoffersen also briefly discussed the emergency rule-making process that would need to take place at the Agency's next meeting.

### **APPROVAL OF MINUTES**

Mr. Johnson presented March 23, 2016 minutes for approval.

Mr. Wright moved for approval of the minutes as presented. Ms. Burns seconded the motion. The motion CARRIED [9-0-0]. **APPROVED by unanimous voice vote**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

### **STATE HEALTH PLAN UPDATE**

Elizabeth Jones, Assistant Director, Division of Health Planning, Department of Health, presented a brief update as follows:

1. The first draft on Freestanding Emergency Department standards have been sent out for comment.
2. Research has started on the Organ Transplant Criteria and Standards.

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3. On April 27, a public hearing was held to discuss the State Health Plan.

### **CONSENT CALENDAR APPLICATIONS**

*Melanie Hill summarized the following Consent Calendar Applications:*

#### **Michael Dunn Center, Rockwood (Roane County), TN – CN1602-006**

The establishment of a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located at 763 Clymersville Road, in Rockwood (Roane County), Tennessee 37854. The estimated project cost is \$1,586,065.

Ms. Hill noted that the project was not opposed and it met the statutory Certificate of Need criteria as follows:

Need- Need is met, as this will transition four residents from the announced closure of GVDC. This is the last obligation that must be met to settle the State's 19-year old lawsuit {DOJ (People First of Tennessee) et al. v. CBDC lawsuit}. Judge Sharp found the State's Exit Plan "fair, reasonable, and adequate". These residents will continue to receive appropriate services and supports but they will now receive them in a community-based setting and in a home-like environment. Economic Feasibility- The project is economically feasible and will be funded through cash reserves. The Michael Dunn Center maintains a cash balance of \$800,000 to \$1,000,000 and the Michael Dunn Foundation has cash and investments that total around \$2.8 million. The beds will be immediately filled and the cost based Medicaid reimbursement will be set by the Comptroller's Office. Since the State of Tennessee is the payor for this service, this setting is more economically feasible for the state. Contribution to the Orderly Development of Health Care-The applicant is an experienced and knowledgeable ICF/IID provider who also is the largest provider of HCBWS. As such, it is familiar with both state and federal regulations; it has prior contractual relationships with both TennCare and the Department, and an understanding of both the intellectual disability population and the intellectual disability system in Tennessee. Additionally, it meets the goals set for GVDC residents to receive appropriate services and supports in alternative, community-based settings.

Mr. Grandy moved for approval of the project based on Ms. Hill's justification. Ms. Jordan seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

#### **Vanderbilt University Medical Center, Nashville (Davidson County), TN – CN1602-010**

*Ms. Burns recused.*

Modification of a hospital requiring a capital expenditure greater than \$5 million. The relocation of the Clinical Research Center (CRC) from the 3rd floor of Medical Center North to the 2nd floor of the Round Wing also in Medical Center North. The proposed new space will house 5 relocated inpatient medical/surgical licensed beds and 6 exam and outpatient rooms. Ancillary and administrative space will be added to support these programs. The estimated project cost is \$10,579,159.

Ms. Hill noted that the project was not opposed and it met the statutory Certificate of Need criteria as follows:

Need- The need to renovate is evident based upon needing to meet current health facility guidelines including those for rare or unknown, highly communicable diseases, such as the Ebola Virus Disease. The proposed project will promote a state of the art design that aligns with cutting edge patient-oriented research. The growth and expansion in both numbers of patients and types of research support this expansion with approximately 400 investigators conducting 500 unique research projects in the last five years. Economic Feasibility- The project will be funded by the cash reserves of Vanderbilt University Medical Center. A letter dated February 3, 2016 from Cecelia Moore, Vice Chancellor for Finance confirmed that VUMC as an operating unit of Vanderbilt University held cash and unrestricted investments with a fair market value of \$827 million. Contribution to the Orderly Development of Health Care-The project does contribute to the orderly development of health care since this construction project will promote a state of the art design that aligns with cutting edge patient-oriented research. If VUMC is to maintain its top 10 ranking in terms of public and private

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research funding, the CRC must continue to grow and expand, as well and meet stringent communicable disease requirements.

Mr. Wright moved for approval of the project based on Ms. Hill's justification. Mr. Doolittle seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Fleming, Grandy, Johnson  
NAY: None

### **CERTIFICATE OF NEED APPLICATIONS**

*Mark Farber summarized the following CON Applications:*

#### **Crossroads Treatment Centers, Johnson City (Washington County), TN – CN1511-048**

The establishment of a non-residential substitution based treatment center for opiate addiction to be located at an address to be assigned on Princeton Road, Johnson City (Washington County), TN 37601. The estimated project cost is \$1,830,770. **WITHDRAWN**

#### **NHC HealthCare Kingsport, LLC, Kingsport (Sullivan County), TN – CN1601-003**

The addition of 8 new Medicare only certified SNF nursing home beds to the existing 52-Medicare only nursing home bed complement of NHC, Kingsport located at 2300 Pavilion Drive in Kingsport (Sullivan County), TN, 37660. The project includes minor renovation to accommodate the additional 8 beds. If approved, the total licensed bed complement will increase to 60 Medicare certified SNF beds. The estimated project cost is \$109,800. These 8 additional beds are subject to the 2015-2016 125 Nursing Home Bed Pool.

Dan Elrod, Esq., and Debbie Hubbard, National HealthCare Corporation Kingsport, addressed the Agency on behalf of the applicant.

Summation waived.

Mr. Wright moved for approval of the project based on the following: 1) Need – The need has been established by the projected growth rates of age 65 and older population and based on the occupancy projections of the health center and on the current occupancy rates of 2016; 2) Economic Feasibility – will be met by cash reserves of the parent corporation; and 3) The project does contribute to the orderly development of adequate and effective health care by providing additional bed capacity for a facility that is in great demand with in the community and that is conveniently located to other health services to provide for the continuum of healthcare . Mr. Doolittle seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

### **GENERAL COUNSEL'S REPORT**

*Mr. Christoffersen summarized the following CON modification requests:*

#### **Wellmont Bristol Regional Medical Center, Bristol, (Sullivan County), TN – CN0005-034A**

Request is to expand mobile PET service from 2 to 3 days per week.

- CN0005-034A permitted the initiation of mobile PET services 1 day per week.
- A modification was unanimously approved on October 26, 2005 to expand from 1 to 2 days per week.

Byron Trauger, Esq., addressed the Agency on behalf of the applicant.

Ms. Jordan moved for approval of the request to expand mobile PET service from two to three days per week. Mr. Grandy seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**\*Open Arms Care Corporation requests, for each of the following certificates of need, that the project cost(s) be increased by greater than 10%. There will be no additional construction costs; however, changes in the financing structure necessitate a higher estimated project cost.**

Michael Brent, Esq., addressed the Agency on behalf of the applicant.

Speaking in support was Theresa Sloan, General Counsel, Department of Intellectual and Developmental Disabilities

**Open Arms Care Corporation d/b/a Greeneville # 1 Chuckey Pike - Greeneville (Greene County), TN — CN1511-050A**

The establishment of a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed site on a 2.72 acre lot on the east side of Chuckey Pike in Greeneville (Greene County), Tennessee, 37641. The estimated project cost is \$1,370,000.

Ms. Jordan moved for approval of the request for a 10 percent cost increase. Mr. Mills seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Care Corporation d/b/a Hamilton County #2 Gamble Road - Georgetown (Hamilton County), TN — CN1511-051A**

The establishment of a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed 1.5 acre site on the southwest quadrant of a 15.5 acre parcel (Parcel 061 045) currently being addressed as 7817 Gamble Road in Georgetown (Hamilton County), Tennessee 37336, approximately 0.1 mile east of the intersection of Gamble Road and Tennessee Highway 58. The estimated project cost is \$1,370,000.

Mr. Mills moved for approval of the request for a 10 percent cost increase. Mr. Grandy seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Corporation d/b/a Greeneville # 3 East Church Street - Greeneville (Greene County), TN — CN1511-052A**

The establishment of a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed site on a 1.37 acre lot on the east quadrant of a 2.74 acre parcel on East Church Street in Greeneville (Greene County), Tennessee, 37743. The estimated project cost is \$1,370,000.

Mr. Gaither moved for approval of the request for a 10 percent cost increase. Mr. Grandy seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Care Corporation d/b/a Hamilton County # 1 Gamble Road - Georgetown (Hamilton County), TN – CN1511-053A**

The establishment of a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed 1.5 acre site on the southeast quadrant of a 15.5 acre parcel (Parcel 061 045) currently being addressed as 7817 Gamble Road in Georgetown (Hamilton County), Tennessee 37336, approximately 0.1 mile east of the intersection of Gamble Road and Tennessee Highway 58. The estimated project cost is \$1,370,000.

Mr. Wright moved for approval of the request for a 10 percent cost increase. Mr. Doolittle seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Care Corporation d/b/a Greeneville # 2 East Church Street - Greeneville (Greene County), TN – CN1511-054A**

The establishment of a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed site on a 1.37 acre lot on the west quadrant of a 2.74 acre parcel on East Church Street in Greeneville (Greene County), Tennessee, 37743. The estimated project cost is \$1,370,000.

Mr. Doolittle moved for approval of the request for a 10 percent cost increase. Ms. Jordan seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Corporation d/b/a Knox County #1 Bishops Bridge (Northeast) - Knoxville (Knox County), TN – CN1512-062A**

To establish a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed lot approximately 0.25 acres, in the northeast quadrant of a parcel of land which is 7.2 acres, currently being addressed as 1817 Bishops Bridge Road in Knoxville (Knox County), Tennessee 37922. The estimated project cost is \$1,370,000.

Ms. Burns moved for approval of the request for a 10 percent cost increase. Ms. Jordan seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Corporation d/b/a Knox County #2 Bishops Bridge (Northwest) - Knoxville (Knox County), TN – CN1512-063A**

To establish a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on an unaddressed lot approximately 0.25 acres, in the northwest quadrant of a parcel of land which is 7.2 acres, currently being addressed as 1817 Bishops Bridge Road in Knoxville (Knox County), Tennessee 37922. The estimated project cost is \$1,370,000.

Dr. Fleming moved for approval of the request for a 10 percent cost increase. Mr. Doolittle seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Care Corporation d/b/a Knox County #4 South Northshore Drive (Northwest) - Knoxville (Knox County), TN – CN1512-064A**

To establish a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on a 0.95 acre lot on the northwest half of a 1.91 acre parcel whose current address is 12629 South Northshore Drive in Knoxville (Knox County), Tennessee, 37922. The estimated project cost is \$1,370,000.

Mr. Grandy moved for approval of the request for a 10 percent cost increase. Mr. Mills seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**Open Arms Care Corporation d/b/a Knox County #3 South Northshore Drive (Southeast) - Knoxville (Knox County), TN – CN1512-065A**

To establish a four bed ICF/IID home for individuals with Intellectual Disabilities (ICF/IID) located on a 0.95 acre lot on the southeast half of a 1.91 acre parcel whose current address is 12629 South Northshore Drive in Knoxville (Knox County), Tennessee 37922. The estimated project cost is \$1,370,000.

Mr. Grandy moved for approval of the request for a 10 percent cost increase. Ms. Jordan seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson  
NAY: None

**CONTESTED CASES UPDATE**

Mr. Christoffersen provided the contested case update.

**PETITION FOR AGENCY TO HEAR APPEAL OF ALJ'S INITIAL ORDER**

**SBH-Kingsport, LLC (Kingsport, Sullivan County) - CN1312-050D**

The establishment of a 72 bed mental health hospital and initiation of inpatient psychiatric and substance abuse services, 28 inpatient beds for psychiatric care for children ages 5-17, 18 inpatient beds for adult psychiatric care for adults ages 18-64, 16 inpatient beds for ages 55+, and 10 adult chemical dependency beds. It would accept voluntary and involuntary admissions.

The Agency will decide whether to hear an appeal of the Initial Order approving the CON; if the Agency chooses to hear the appeal, the appeal will be at a future meeting. If the Agency declines to hear the appeal, the appeal will go to the Davidson County Chancery Court.

Dan Elrod, Esq., spoke on behalf of Mountain States Health Alliance.

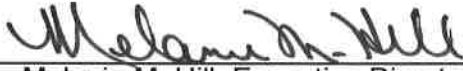
Bill West, Esq., spoke on behalf of the applicant.

Mr. Gaither moved for approval of the appeal based on the need to hear the additional information that's been presented. Mr. Grandy seconded the motion. The motion CARRIED [5-4-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Burns, Grandy,  
NAY: Doolittle, Wright, Fleming, Johnson

## ADJOURNMENT

There being no further business, the meeting adjourned.

A handwritten signature in dark ink, appearing to read "Melanie M. Hill", is written over a horizontal line.

Melanie M. Hill, Executive Director

\* Minutes provide only a brief staff summary of the meeting and are not intended to be an all-inclusive report. The HSDA maintains a detailed record of each meeting (recording and transcript) that is available upon request by contacting the HSDA office at 615-7412364.